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**NOTICE OF PROPOSED REVISION OF REGULATIONS
AND STATEMENT OF REASONS**

**California Code of Regulations
Title 2. Administration
Division 1. Administrative Personnel
Chapter 1. State Personnel Board
Subchapter 1. General Civil Service Regulations
Article 4. Hearings and Appeals**

DATE: October 7, 2008

TO: ALL INTERESTED PARTIES

**SUBJECT: PROPOSED AMENDMENTS TO REGULATION CONCERNING
ASSIGNMENT OF APPEAL TO APPROPRIATE REVIEW PROCESS**

AUTHORITY:

Under authority established in Government Code (GC) sections 18701 and 18675, the State Personnel Board (SPB or Board) proposes to amend Title 2 of the California Code of Regulations (2 CCR), section 51.3, which sets forth the review process assigned to appeals and complaints filed with the SPB. Pursuant to GC sections 18211 and 18214, these regulations are subject to review by the Office of Administrative Law in accordance with those review provisions set forth in GC 18214.

REFERENCE:

These regulations are amended to implement, interpret, and/or make specific GC section 18675.

PUBLIC HEARING:

Date and Time: January 14, 2009, from 9:45 a.m. – 10:15 a.m.

Place: State Personnel Board
First Floor Auditorium

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801 Capitol Mall
Sacramento, CA 95814

Purpose: To receive written and/or oral comments about this action.

WRITTEN PUBLIC COMMENT PERIOD:

The written public comment period will close Monday, December 1, 2008, at 5:00 p.m. Any person may submit written comments about the proposed amendments. To be considered by the Board, the appropriate person identified below must receive written comments before the close of the written public comment period.

Written comments may be submitted to:

Dorothy Bacskai Egel, Senior Staff Counsel
State Personnel Board
801 Capitol Mall, MS 53
Sacramento, CA 95814

or to: degel@spb.ca.gov or faxed to her attention at: (916) 653-4256.

AVAILABILITY OF PROPOSED TEXT AND STATEMENT OF REASONS/CONTACT PERSONS:

Copies of the express terms of the proposed action, the Statement of Reasons, and all of the information upon which this proposal is based are available for review upon request to Dorothy Bacskai Egel. The rulemaking file is available for review during normal business hours at SPB, 801 Capitol Mall, Sacramento, CA 95814. Additional information or questions regarding the substance of the proposed action should be directed to Dorothy Bacskai Egel, as specified above. Questions regarding the regulatory process in conjunction with this regulation should be directed to Dorothy Bacskai Egel at SPB, 801 Capitol Mall, MS 53, Sacramento, CA 95814, or by telephone at (916) 653-1403 or TDD (916) 653-1498. In the alternative, inquiries may be directed to Elise S. Rose at SPB, 801 Capitol Mall, MS 53, Sacramento, CA 95814, or by telephone at (916) 653-1403 or TDD (916) 653-1498.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

If any substantial and sufficiently related changes are made to the text as a result of comments received during the public comment period, SPB will make the full text of the changed regulations available for at least 15 days before the date the regulations are permanently amended.

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INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

GC section 18670 vests with the SPB jurisdiction and responsibility of holding hearings and conducting investigations concerning all matters related to the enforcement of the State Civil Service Act (GC § 18500 *et seq.*).

GC section 18675 authorizes the SPB to establish rules of practice and procedure to conduct hearings and investigations concerning all matters related to the enforcement of the State Civil Service Act.

2 CCR section 51.3 currently sets forth the appropriate review process for each type of appeal, as follows: (1) The general merit system appeals process shall be used for those types of appeals described in 2 CCR section 53; (2) The hearing office process shall be used for appeals described in 2 CCR section 52, or when any portion of an appeal is described in 2 CCR section 52; (3) The discrimination complaint process described in 2 CCR section 54 shall be used for appeals of appointing power actions other than those covered by parts (1) and (2); and (4) The board reserved the right to recall any appeal for hearing or investigation by it.

The purpose of the proposed amendment is to assign those types of appeals or complaints described in 2 CCR section 53 to the hearing office process, as opposed to the general merit system appeals process, and to assign those types of appeals and complaints described in 2 CCR sections 51.9 and 211 to the general merit system appeals process.

IMPACT ON SMALL BUSINESSES:

It is anticipated that the proposed amendments will have no impact on small businesses, as the regulations apply strictly to the employment of civil service employees.

LOCAL MANDATE:

SPB has determined that the proposed action imposes no additional mandate on local agencies or school districts and, therefore, requires no reimbursement pursuant to GC section 17561.

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COST ESTIMATES OF PROPOSED ACTION:

Costs or Savings to State Agencies:

The proposed regulations may involve additional costs to state agencies, as the SPB will bill those agencies on a pro rata basis for investigations or hearings conducted for those types of appeals or complaints described in 2 CCR section 53.

Impact on Housing Costs:

No impact.

Costs or Savings in Federal Funding to the State:

No impact.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed:

No impact.

Other Nondiscretionary Costs or Savings Imposed on Local Agencies:

No impact in accordance with Government Code sections 17500-17630.

Cost Impact on Private Persons or Businesses:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT OF POTENTIAL ADVERSE ECONOMIC IMPACT ON BUSINESS:

The proposed action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

ASSESSMENT REGARDING THE EFFECT ON JOBS/BUSINESSES:

The adoption of the proposed action should neither create nor eliminate jobs in the state, nor result in the elimination or expansion of existing businesses in the state, nor create or expand businesses in the state.

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ALTERNATIVES STATEMENT:

SPB has determined that no reasonable alternative considered by SPB, or that has otherwise been identified and brought to the attention of SPB, will be more effective in carrying out the purpose for which this action is proposed, or will be as effective as and less burdensome to affected private persons than the proposed action.

FINAL STATEMENT OF REASONS:

It is anticipated that the proposed regulations will be filed with the Office of Administrative Law pursuant to GC section 18214, and shall include a Final Statement of Reasons for the amendments. Copies of the Final Statement of Reasons may be obtained from the contact person when it becomes available.

**ACCESSING INFORMATION REGARDING THIS RULEMAKING FILE ON THE
STATE PERSONNEL BOARD WEBSITE:**

The text of the proposed amendments, the Notice of Proposed Amendment of Regulations and Statement of Reasons can be viewed at www.spb.ca.gov.

STATEMENT OF REASONS:

The amended regulation provides greater flexibility in the designation of cases to improve timeliness and quality of decisions rendered in appeals and complaints filed at the State Personnel Board. The amended regulation will also enable the State Personnel Board to more readily recoup its costs incurred for those hearings and investigations it conducts concerning those types of appeals and complaints set forth in 2 CCR § 53.

MARY FERNANDEZ
Assistant Executive Officer

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Attachment: Proposed Text of Amended Regulations

California Code of Regulations

Title 2. Administration

Division 1. Administrative Personnel

Chapter 1. State Personnel Board

Subchapter 1. General Civil Service Regulations

Article 4. Hearings and Appeals

§ 51.3 Assignment of Appeal to Appropriate Review Process.

(a) The executive officer or his or her designee shall determine the appropriate review process for each appeal or complaint, as follows:

~~(1) The general merit system appeals process shall be used for appeals described in Section 53.~~

(21) The hearing office process shall be used for appeals and complaints described in Sections 52 and 53, or when any portion of an appeal or complaint is described in Sections 52 or 53.

(32) The discrimination complaint process described in Section 54 shall be used for appeals of appointing power actions other than those covered by parts (1) and (2).

(3) The general merit system appeals process shall be used for those appeals and complaints filed pursuant to the provisions of Sections 51.9 and 211.

(b) This section shall not restrict the board's ability to recall any appeal for hearing and investigation by it.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.